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6 **BEFORE THE**  
7 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
8 **DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

11 **JAIME TERESA GAGNE**  
12 **42229 Wildwood Lane**  
13 **Murrieta, CA 92562**

14 **Vocational Nurse License No. VN 233987**

15 Respondent.

Case No. VN-2008-1157

16 **DEFAULT DECISION AND ORDER**

17 [Gov. Code, §11520]

18 **FINDINGS OF FACT**

19 1. On or about March 10, 2011, Complainant Teresa Bello-Jones, J.D., M.S.N., R.N., in  
20 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric  
21 Technicians, Department of Consumer Affairs, filed Accusation No. VN-2008-1157 against  
22 Jaime Teresa Gagne (Respondent) before the Board of Vocational Nursing and Psychiatric  
23 Technicians. (Accusation attached as Exhibit A.)

24 2. On or about April 28, 2008, the Board of Vocational Nursing and Psychiatric  
25 Technicians (Board) issued Vocational Nurse License No. VN 233987 to Respondent. The  
26 Vocational Nurse License expired on June 30, 2009, and has not been renewed.

27 3. On or about March 10, 2011, Respondent was served by Certified and First Class  
28 Mail copies of the Accusation No. VN-2008-1157, Statement to Respondent, Notice of Defense,  
Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
and 11507.7) at Respondent's address of record which, pursuant to Business and Professions  
Code section 136 and California Code of Regulations, title 16, section 2504, is required to be  
reported and maintained with the Board, which was and is:

1 42229 Wildwood Lane  
2 Murrieta, CA 92562

3 4. Service of the Accusation was effective as a matter of law under the provisions of  
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
5 124.

6 5. Government Code section 11506 states, in pertinent part:

7 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
8 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
9 of the accusation not expressly admitted. Failure to file a notice of defense shall  
constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
may nevertheless grant a hearing.

10 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
11 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. VN-  
12 2008-1157.

13 7. California Government Code section 11520 states, in pertinent part:

14 (a) If the respondent either fails to file a notice of defense or to appear at the  
15 hearing, the agency may take action based upon the respondent's express admissions  
16 or upon other evidence and affidavits may be used as evidence without any notice to  
respondent.

17 8. Pursuant to its authority under Government Code section 11520, the Board finds  
18 Respondent is in default. The Board will take action without further hearing and, based on the  
19 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
20 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
21 file at the Board's offices regarding the allegations contained in Accusation No. VN-2008-1157,  
22 finds that the charges and allegations in Accusation No. VN-2008-1157, are separately and  
23 severally, found to be true and correct by clear and convincing evidence.

24 9. Taking official notice of its own internal records, pursuant to Business and  
25 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
26 and Enforcement is \$877.50 as of April 6, 2011.

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## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Jaime Teresa Gagne has subjected her Vocational Nurse License No. VN 233987 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Vocational Nursing and Psychiatric Technicians is authorized to revoke Respondent's Vocational Nurse License based upon the following violations alleged in the Accusation which are supported by the Default Decision Investigatory Evidence Packet in this case:

a. Respondent has subjected her license to disciplinary action under section 2878.5, subdivision (a) of the Code for unprofessional conduct in that Respondent possessed methamphetamine, and a pipe used to smoke methamphetamine, on February 12, 2009.

b. Respondent has subjected her license to disciplinary action under sections 490 and 2878, subdivision (f) of the Code in that on or about February 18, 2009, in a criminal proceeding entitled *People of the State of California v. Jaime Teresa Gagne*, in Orange County Superior Court, case number 08CM13096, Respondent was convicted on her plea of guilty of violating Penal Code sections 484, subdivision (a)/488, petty theft; and Penal Code section 459, burglary, misdemeanors, crimes that are substantially related to the qualifications, functions, and duties of a licensed vocational nurse.

c. Respondent has subjected her license to disciplinary action under section 2878, subdivision (j) of the Code for unprofessional conduct in that Respondent committed acts of dishonesty when she shoplifted a dress from a department store on October 28, 2008, and she was convicted for giving false information to a police officer in violation of Penal Code section 148.9, subdivision (a) on February 17, 2009.

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ORDERED June 3, 2011

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 ANTOINETTE B. CINCOTTA  
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*Attorneys for Complainant*

**FILED**

Board of Vocational Nursing  
and Psychiatric Technicians

9 **BEFORE THE**  
10 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. VN-2008-1157

14 **JAIME TERESA GAGNE**  
15 **42229 Wildwood Lane**  
16 **Murrieta, CA 92562**

**A C C U S A T I O N**

17 **Vocational Nurse License No. VN 233987**

Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in  
22 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric  
23 Technicians, Department of Consumer Affairs.

24 2. On or about April 28, 2008, the Board of Vocational Nursing and Psychiatric  
25 Technicians issued Vocational Nurse License Number VN 233987 to Jaime Teresa Gagne  
26 (Respondent). The Vocational Nurse License expired on June 30, 2009, and has not been  
27 renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct,

1 notwithstanding that evidence of that misconduct may be recorded in a record  
2 pertaining to an arrest.

3 This section shall not be construed to apply to any drug diversion program  
4 operated by any agency established under Division 2 (commencing with Section 500)  
5 of this code, or any initiative act referred to in that division.

6 9. Section 493 of the Code states:

7 Notwithstanding any other provision of law, in a proceeding conducted by a  
8 board within the department pursuant to law to deny an application for a license or to  
9 suspend or revoke a license or otherwise take disciplinary action against a person who  
10 holds a license, upon the ground that the applicant or the licensee has been convicted  
11 of a crime substantially related to the qualifications, functions, and duties of the  
12 licensee in question, the record of conviction of the crime shall be conclusive  
13 evidence of the fact that the conviction occurred, but only of that fact, and the board  
14 may inquire into the circumstances surrounding the commission of the crime in order  
15 to fix the degree of discipline or to determine if the conviction is substantially related  
16 to the qualifications, functions, and duties of the licensee in question.

17 As used in this section, "license" includes "certificate," "permit," "authority,"  
18 and "registration."

19 10. Section 2878 of the Code states:

20 The Board may suspend or revoke a license issued under this chapter [the  
21 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the  
22 following:

23 . . . .  
24 (f) Conviction of a crime substantially related to the qualifications, functions,  
25 and duties of a licensed vocational nurse, in which event the record of the conviction  
26 shall be conclusive evidence of the conviction.

27 . . . .  
28 (j) The commission of any act involving dishonesty, when that action is related  
to the duties and functions of the licensee.

11. Section 2878.5 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning  
of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for  
a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by  
a licensed physician and surgeon, dentist or podiatrist administer to himself or herself  
or furnish or administer to another, any controlled substance as defined in Division 10  
of the Health and Safety Code, or any dangerous drug as defined in Section 4022. . .



## REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of Chapter 5 of Division 2 of the Business and Professions Code.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

(d) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and Professions Code.

(e) Conviction of a crime involving fiscal dishonesty.

(f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and Professions Code.

13. California Code of Regulations, title 16, section 2522 states:

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

(2) Actual or potential harm to the public.

(3) Actual or potential harm to any patient.

(4) Overall disciplinary record.

(5) Overall criminal actions taken by any federal, state or local agency or court.

(6) Prior warnings on record or prior remediation.

1 (7) Number and/or variety of current violations.

2 (8) Mitigation evidence.

3 (9) In case of a criminal conviction, compliance with terms of sentence and/or  
4 court-ordered probation.

5 (10) Time passed since the act(s) or offense(s) occurred.

6 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to  
7 Penal Code section 1203.4.

8 (12) Cooperation with the Board and other law enforcement or regulatory  
9 agencies.

10 (13) Other rehabilitation evidence.

#### 11 COSTS

12 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
13 administrative law judge to direct a licentiate found to have committed a violation or violations of  
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
15 enforcement of the case.

#### 16 DRUG

17 15. Methamphetamine is a Schedule II controlled substance as designated by Health and  
18 Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and  
19 Professions Code section 4022.

#### 20 FIRST CAUSE FOR DISCIPLINE

##### 21 (Unprofessional Conduct – Illegal Possession of a Controlled Substance & Paraphernalia)

22 16. Respondent is subject to disciplinary action under sections 2878.5, subdivision (a) of  
23 the Code for unprofessional conduct in that Respondent possessed a controlled substance, to wit,  
24 methamphetamine, and a pipe used to smoke methamphetamine. The facts and circumstances are  
25 as follows:

26 17. On or about the early morning of February 12, 2009, a patrol officer from the  
27 Costa Mesa Police Department observed a vehicle, driven by Respondent, with a broken rear  
28 brake light. The officer followed behind Respondent and noted that her vehicle drifted into the  
bicycle lane twice. As the officer got closer to conduct a records check, Respondent's vehicle

1 pulled over to the curb abruptly. The officer activated his emergency lights to indicate he was  
2 conducting a traffic stop. As the officer made contact with Respondent, he noted there was a  
3 male in the passenger seat. Respondent stated she had lost her driver's license, and she did not  
4 have any registration or insurance information because it was her sister's car. As the officer  
5 shined his flashlight in the vehicle's interior, he observed Respondent pushing her skirt between  
6 her legs as though to conceal something. The vehicle's license plate showed Respondent as one  
7 of the registered owners. Respondent told the officer her name was "L\*\*\*\*\* Gagne" and insisted  
8 the vehicle belonged to her sister. Respondent blamed the officer for her lane straddling stating  
9 that the officer approached from behind so rapidly, she was scared. While standing at the  
10 passenger door, the officer noted a chemical odor coming from the interior; the odor was  
11 consistent with controlled substances being smoked inside the vehicle. Respondent and her  
12 passenger were directed to exit the vehicle and sit on the curb. The officer saw in plain sight on  
13 the seat where the passenger had been sitting a torn piece of baggie which appeared to be melted  
14 on one end. Next to the baggie was a small screwdriver typically used to scrape the interior  
15 portions of pipes used to smoke controlled substances. Respondent refused to give the officer  
16 permission to search her vehicle. Having probable cause, the officer started looking through the  
17 vehicle. Respondent became irate and adamantly denied she was a drug user. Inside the center  
18 console the officer located a glass methamphetamine pipe. Both Respondent and her passenger  
19 denied ownership of the pipe. Also located was a social security card and a paycheck stub with  
20 Respondent's name on it. Respondent continued to tell the officer that it was her sister's vehicle  
21 and that the property did not belong to her. A records check on Respondent's name revealed that  
22 she had an outstanding warrant for burglary. Respondent finally confessed to the officer and gave  
23 her true name and claimed the warrant was for petty theft only. Respondent was arrested on her  
24 warrant and for possession of controlled substance paraphernalia, (Health & Saf. Code, § 11364),  
25 and giving false information to a police officer (Pen. Code, § 148.9(b)). During booking at the  
26 Costa Mesa Police Department Jail, Respondent denied that she was hiding drugs on her person.  
27 A search revealed that Respondent had concealed a 1" x 1" pink coin baggie in her bra that  
28 contained a small, useable quantity of what tested positive for methamphetamine. The officer

1 added possession of a controlled substance (Health & Saf. Code, § 11377(a)) to Respondent's  
2 charges. During a police interview with Respondent, she admitted the methamphetamine pipe  
3 belonged to her.

4 18. As a result of the above arrest, on or about February 17, 2009, in the matter of  
5 *People of the State of California vs. Jaime Teresa Gagne*, in Orange County Superior Court, case  
6 number 09HF0259, Respondent pled guilty to possession of a controlled substance in violation of  
7 Health and Safety Code section 11377, subdivision (a), a felony (Count 1); and giving false  
8 information to a police officer in violation of Penal Code section 148.9, subdivision (a), a  
9 misdemeanor (Count 3). The possession of controlled substance paraphernalia, in violation of  
10 Health and Safety Code section 11364 (Count 2), was dismissed pursuant to a plea agreement.

11 19. The court deferred entry of judgment on Count 1 and Respondent was ordered to  
12 enroll in a drug treatment program pursuant to Penal Code section 1000. As to Count 3,  
13 Respondent was ordered to spend three days in the county jail with credit for 3 days. On or about  
14 April 9, 2009, a hearing was held in order for Respondent to provide proof she had enrolled in a  
15 drug treatment program. Respondent failed to appear. Respondent's Penal Code section 1000  
16 proceedings were terminated and a warrant was issued for her arrest. At a hearing on or about  
17 January 4, 2010, Respondent was remanded to the custody of the sheriff.

18 20. At a hearing on January 19, 2010, the court reinstated Penal Code section 1000  
19 and Respondent was permitted to re-enroll in a drug program. On August 2, 2010, Respondent  
20 provided proof of completion from a drug treatment program.

#### 21 SECOND CAUSE FOR DISCIPLINE

22 **(February 18, 2009 Criminal Conviction for Burglary & Petty Theft on October 28, 2008)**

23 21. Respondent has subjected her license to disciplinary action under sections 490 and  
24 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially  
25 related to the qualifications, functions, and duties of a licensed vocational nurse. The  
26 circumstances are as follows:

27 a. On or about February 18, 2009, in a criminal proceeding entitled *People of*  
28 *the State of California v. Jaime Teresa Gagne*, in Orange County Superior Court, case number

1 08CM13096, Respondent was convicted on her plea of guilty of violating Penal Code sections  
2 484, subdivision (a)/488, petty theft; and Penal Code section 459, burglary, misdemeanors.

3 b. As a result of the conviction, on or about February 18, 2009, Respondent  
4 was sentenced to three years informal probation, and ordered to serve nine days in the Orange  
5 County Jail, with credit for nine days. Respondent was further ordered to pay \$150 in fees, fines,  
6 and restitution, and abide by the terms of probation. Sentencing was stayed on the petty theft  
7 conviction.

8 c. The facts that led to the conviction were that on or about the afternoon of  
9 October 28, 2008, Respondent entered a Santa Ana Nordstrom's store. She was observed by the  
10 store's loss prevention agents behaving in a furtive manner, moving from department to  
11 department, selecting clothing from the racks and giving the items to a sales associate to reserve a  
12 fitting room. Respondent entered the fitting room stall with a total of 14 items. Two loss  
13 prevention agents had been alerted and were inside the fitting room area to maintain observation.  
14 Respondent eventually left the fitting room with numerous items in her hand. She requested a  
15 sales associate place the items on hold for her. A loss prevention agent entered the stall where  
16 Respondent had been and discovered a dress tied at the bottom behind a mirror. Concealed  
17 within the dress were numerous items of old, worn clothing. The agents observed Respondent  
18 enter the women's restroom. After Respondent left the restroom, they found a defeated store  
19 security sensor inside the toilet stall. Respondent passed by several open and manned registers  
20 and made no attempt to pay for the merchandise she had concealed on her person. Respondent  
21 was apprehended outside the store and taken to the security office without incident. A dress  
22 worth \$344 was recovered from Respondent's purse. Respondent stated to the loss prevention  
23 agents that her family was being threatened by a woman who was forcing Respondent to steal  
24 merchandise in order to obtain a cash refund. Respondent said she was told by the woman that if  
25 she successfully stole merchandise and obtained a refund, the woman would stop threatening  
26 Respondent's family. The Santa Ana Police Department was notified and officers took  
27 Respondent into custody. Respondent admitted to the police officers that she had made up the  
28 story about being forced to steal; she entered Nordstrom's with the intent to shoplift the dress.

1 THIRD CAUSE FOR DISCIPLINE

2 (Commission of Acts Involving Dishonesty)

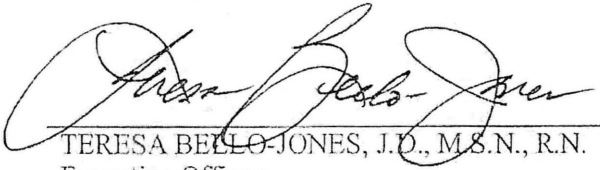
3 22. Respondent has subjected her license to disciplinary action under section 2878,  
4 subdivision (j) of the Code for unprofessional conduct in that on October 28, 2008, Respondent  
5 committed an act of dishonesty as detailed in paragraph 21, above. Further, on February 17,  
6 2009, Respondent was convicted for giving false information to a police officer in violation of  
7 Penal Code section 148.9, subdivision (a), and more fully described in paragraphs 17-18, above.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
10 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians  
11 issue a decision:

- 12 1. Revoking or suspending Vocational Nurse License Number VN 233987, issued to  
13 Jaime Teresa Gagne;  
14 2. Ordering Jaime Teresa Gagne to pay the Board of Vocational Nursing and Psychiatric  
15 Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to  
16 Business and Professions Code section 125.3;  
17 3. Taking such other and further action as deemed necessary and proper.

18  
19 DATED: March 10, 2011.

20   
21 TERESA BELLO-JONES, J.D., M.S.N., R.N.  
22 Executive Officer  
23 Board of Vocational Nursing and Psychiatric Technicians  
24 Department of Consumer Affairs  
25 State of California  
26 Complainant

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25 70436576.doc